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November 12, 2009

Lance M. Miyake  
IBEW, Local Union 1260  
2305 S. Beretania St.  
Honolulu, Hawaii 96826-1494

Re: Docket No. 2008-0083 - Application of Hawaiian Electric Company, Inc. for Approval of Rate Increases and Revised Rate Schedules and Rules

Dear Mr. Miyake:

This is in response to your letter dated July 31, 2009, filed on August 3, 2009, in which you request that the Public Utilities Commission "inform [Hawaiian Electric Company, Inc. ("HECO")] that they are wrong to strongly imply that the PUC is demanding Schedule E to be eliminated . . . and that it is not the intention of the PUC to take away a negotiated benefit." This is also in response to your letter dated November 10, 2009, filed on November 12, 2009, "request[ing] a meeting with [the Chairman] for the purpose of discussing [HECO's] elimination of Schedule E."

In response to your letters, please be advised that, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-29, commissioners and commission staff are prohibited from ex parte communications. Section 6-61-29 states:

- (a) No person, whether or not a party to or participant in an agency hearing, shall consult or communicate with any commissioner or hearings officer or any member of the commission staff on any issue of fact in a contested case proceeding before the commission, except as otherwise authorized in this section or by law.
- (b) All written and oral ex parte communications received by any commissioner or hearings officer, containing facts or contentions in a contested case proceeding, which may affect the decision in the proceeding and which are known or believed to be unauthorized at the time of receipt, shall be immediately sent to all interested parties to the proceeding and made an official part of the record.

- (c) The following classes of ex parte communications are authorized:
- (1) Communication between the commission and commission staff;
  - (2) Communication that relates solely to matters which a commissioner or hearings officer is authorized to dispose of on an ex parte basis;
  - (3) Communication with counsel or staff for the commission relating solely to matters of practice and procedure; and
  - (4) Communication had after adequate notice and opportunity for all parties to participate.

The commission, however, in response to your letter, does refer you to the Interim Decision and Order filed on July 2, 2009.<sup>1</sup> On the issue of employee discount, the commission stated that:

The commission is concerned with the justness and reasonableness of electricity discounts for HECO employees and former employees during these times of economic crisis and the critical need to incentivize energy conservation. The proposed Schedule E on page 24 of Exhibit HECO-106 provides full-time HECO employees and former employees with electricity rates that are two-thirds of the effective Schedule R rate for the first 825 kWh of consumption in each month. Such rates may be unduly discriminatory and under-allocate electricity costs to HECO employees and former employees. For purposes of interim rates, the commission directs HECO to remove Schedule E and adjust other rates based on this change. The Parties may provide additional testimony on the justness and reasonableness of Schedule E by July 20, 2009.

In compliance with the Interim Decision and Order, HECO filed revised schedules, which the commission adopted by Order Approving HECO's Revised Schedules, filed on August 3, 2009. In that order, the commission directed HECO to "promptly re-file its revised tariff sheet, consistent with the terms of this Order, deleting references to Schedule E, and inserting the appropriate effective date."

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<sup>1</sup>The commission orders referenced in this letter may be viewed on the commission's website, <http://puc.hawaii.gov/>, by accessing its Document Management System.

As the commission has not yet made a final decision on the employee discount issue, we are unable to discuss the merits of the commission's Interim Decision and Order with you at this time. Contrary to the assertion in your November 12, 2009 letter, commission counsel did not orally state to you that "the PUC indeed mandated the removal of Schedule E"; rather counsel repeatedly indicated that commission staff was unable to discuss the merits of the employee discount issue as no final decision had been made on that issue, and instead referred you to the Interim Decision and Order and subsequent order approving revised schedules.

In sum, as stated by commission staff, commissioners and staff are unable to meet with you at this time to discuss the employee discount issue. An evidentiary hearing was conducted between October 26 and November 4, 2009; at which time the employee discount issue was heard. Post-hearing briefing has yet to be completed. However, the commission expects a decision and order to issue following completion of post-hearing briefing.

Sincerely,



Brooke K. Kane  
Administrative Director

BKK:SKD:ac

- c. Catherine P. Awakuni  
Dean Matsuura  
Dr. Kay Davoodi